

Message Text

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ACTION EUR-12

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C O N F I D E N T I A L SECTION 01 OF 02 LONDON 01282

E.O. 11652: XGDS-1
TAGS: PINT PFOR COE SHUM UK EI
SUBJECT: NORTHERN IRELAND: DECISION OF EUROPEAN
HUMAN RIGHTS COURT ON IRELAND/UK CASE

REF: STRASBOURG 026

1. SUMMARY: ON JANUARY 18 THE EUROPEAN COURT OF HUMAN RIGHTS DELIVERED ITS JUDGMENT IN THE CASE BROUGHT BY THE GOVERNMENT OF THE IRISH REPUBLIC AGAINST THE GOVERNMENT OF THE UNITED KINGDOM (REFTEL). THE COURT HELD THAT THE USE OF THE FIVE INTERROGATION TECHNIQUES PRACTICED BY BRITISH SECURITY FORCES IN NORTHERN IRELAND IN 1971 CONSTITUTED "INHUMAN AND DEGRADING TREATMENT," BUT REVERSED THE EARLIER FINDING OF THE EUROPEAN COMMISSION THAT THE FIVE TECHNIQUES CONSTITUTED THE USE OF TORTURE. THE COURT ALSO CONFIRMED THAT A STATE OF PUBLIC EMERGENCY HAD EXISTED IN NORTHERN IRELAND AND THAT THE PRACTICE OF INTERNMENT DID NOT EXCEED THE EXIGENCIES OF THE SITUATION. THE COURT DECLINED TO DIRECT HMG TO BRING CRIMINAL CHARGES AGAINST ANY MEMBERS OF THE SECURITY FORCES INVOLVED AND ALSO JUDGED THAT THERE HAD BEEN NO DISCRIMINATION IN THE APPLICATION OF
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INTERNMENT AND DETENTION. HMG IS SATISFIED AT THE OUT-
COME OF THE COURT CASE AND EXPRESSED HOPE THAT FUTURE
COOPERATION BETWEEN THE REPUBLIC AND THE UK ON SECURITY
MATTERS WILL CONTINUE NOW THAT THIS CONTENTIOUS ISSUE
HAS BEEN RESOLVED. THE PARTIES IN NORTH IRELAND HAVE
RESPONDED TO THE DECISION ALONG PREDICTABLE LINES. END
SUMMARY.

2. ON JANUARY 18 THE EUROPEAN COURT OF HUMAN RIGHTS ISSUED A JUDGMENT IN THE CASE OF THE IRISH REPUBLIC VS THE UK RELATING TO ALLEGED VIOLATIONS TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS BY BRITISH SECURITY FORCES IN NORTHERN IRELAND. IN 1976 THE EUROPEAN COMMISSION OF HUMAN RIGHTS CAME TO THE CONCLUSION THAT THE COMBINED USE OF THE FIVE TECHNIQUES OF INTERROGATION CONSTITUTED THE PRACTICE OF INHUMAN TREATMENT AND TORTURE. THE GOI EXERCISED ITS RIGHT TO REFER THE CASE TO THE EUROPEAN COURT OF HUMAN RIGHTS, ASKING THE COURT TO REVERSE OTHER FINDINGS BY THE COMMISSION WHICH WERE FAVORABLE TO THE UK, INCLUDING THE DETERMINATION THAT DETENTION AND INTERNMENT WERE JUSTIFIED BY THE SECURITY SITUATION AND THAT THESE PRACTICES WERE NOT DISCRIMINATORY TO THE MINORITY POPULATION. THE GOI ALSO ASKED FOR AN ORDER DIRECTING THE UK TO PROSECUTE MEMBERS OF THE SECURITY FORCES WHO WERE RESPONSIBLE FOR THE ILL TREATMENT FOUND BY THE COMMISSION.

3. THE MOST SIGNIFICANT OF THE COURT'S DECISIONS WAS THE REVERSAL OF THE COMMISSION'S FINDING REGARDING THE USE OF TORTURE. BY 16 VOTES TO 1 THE COURT DECIDED THAT THE USE OF THE FIVE TECHNIQUES CONSTITUTED A PRACTICE OF "INHUMAN AND DEGRADING TREATMENT" BUT THAT THEY DID NOT CONSTITUTE "A PRACTICE OF TORTURE." THE COURT ALSO RULED THAT THE POLICY OF DETENTION AND INTERN-

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MENT DID NOT EXCEED THE EXIGENCIES OF THE SITUATION DURING THE STATE OF EMERGENCY IN NORTHERN IRELAND AND THAT DETENTION AND INTERNMENT WERE NOT APPLIED IN A DISCRIMINATORY MANNER. IN ADDITION, THE COURT RULED THAT IT COULD NOT DIRECT THE UK TO TAKE PROCEEDINGS AGAINST MEMBERS OF THE SECURITY FORCES RESPONSIBLE FOR THE PRACTICES IDENTIFIED.

4. THE MAJOR PUBLIC STATEMENT ON THE JUDGMENT CAME FROM NORTH IRELAND SECRETARY ROY MASON WHO SAID THAT IT WAS "A MATTER OF SATISFACTION TO HMG THAT THE COURT HAD REJECTED THE CHARGE OF TORTURE." HE CALLED THE INCIDENT A "CHAPTER NOW CLOSED," AND STATED HIS HOPE THAT THE REPUBLIC AND THE UK COULD CONCENTRATE THEIR EFFORTS ON REMAINING TERRORISTS IN NORTHERN IRELAND. OUR SOURCES AT THE FCO ECHOED MASON'S COMMENTS THAT HMG WAS "NOT PROUD BUT SATISFIED" WITH THE FINDINGS OF THE EUROPEAN COURT. THEY PRIVATELY OFFERED THE OPINION THAT THE GOI HAD ACCOMPLISHED VERY LITTLE IN THE LENGTHY AND COSTLY PROCESS OF LITIGATION AND WAS OBVIOUSLY VEXED AT THE OUTCOME. THEY POINTED OUT THAT THE COURT'S FINDINGS WERE IDENTICAL TO THOSE OF AN HMG COMMISSION

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OF INQUIRY IN 1971 AND THAT PRIME MINISTER HEATH HAD ORDERED THE ABOLITION OF THE CONTROVERSIAL INTERROGATION PRACTICES IN ULSTER. THE BRITISH GOVERNMENT HAD HOPED TO COME TO AN AGREEMENT WITHOUT SENDING THE CASE TO THE EUROPEAN COURT AND THE IRISH INSISTENCE ON TAKING IT TO THE COURT WAS CONSIDERED TO BE AN UNFRIENDLY ACTION MOTIVATED BY NARROW DOMESTIC POLITICAL CONSIDERATIONS IN THE REPUBLIC.

5. THE RESPONSE AMONG THE POLITICAL PARTIES OF NORTHERN IRELAND TO THE DECISION OF THE EUROPEAN COURT WAS FAIRLY PREDICTABLE. OFFICIAL UNIONIST LEADER HARRY WEST HAILED THE DECISION, AS DID A SPOKESMAN OF PAISLEY'S DEMOCRATIC UNIONISTS. SDLP LEADER GERRY FITT WAS OBVIOUSLY UNHAPPY WITH THE COURT'S DECISION, STATING THAT HE FAILED TO SEE THE DIFFERENCE BETWEEN INHUMAN AND DEGRADING TREATMENT AND TORTURE.

6. COMMENT: HMG IS OBVIOUSLY PLEASED AT THE DECISION IN STRASBOURG, THOUGH FOLLOWING THE RATHER DIFFICULT EXCHANGES AFTER THE LYNCH INTERVIEW, IT IS ATTEMPTING TO MINIMIZE COMMENT ON THE DECISION IN THE HOPE THAT
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FURTHER COOPERATION BETWEEN THE REPUBLIC AND THE UK CAN
CONTINUE TO IMPROVE, WHILE IT PRIVATELY REGARDS THE
DECISION AS A BLOW TO IRISH PRESTIGE. THE COURT CASE,
WHICH HAD DRAGGED ON FOR SO LONG AND HAD
OCCASIONALLY RECEIVED CONSIDERABLE PUBLICITY, IS NOW
A MATTER OF RECORD AND THIS MAJOR SOURCE OF IRRITATION
BETWEEN THE TWO GOVERNMENTS WILL BE HOPEFULLY LAID TO
REST.

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